

Message Text

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C O N F I D E N T I A L SECTION 1 OF 2 GENEVA 6217

E.O. 11652: GDS

TAGS: PARM, CCD

SUBJ: CCD-STATUS REPORT ON ENMOD NEGOTIATIONS AS OF AUGUST 2,
1976

1. SUMMARY. THIS MESSAGE REPORTS ON STATUS AS OF AUGUST 2
OF CCD NEGOTIATIONS ON DRAFT ENMOD CONVENTION. END SUMMARY.

2. DURING PERIOD JULY 2-AUGUST 2, CCD'S WORKING GROUP HELD
TWELVE INFORMAL MEETINGS TO FACILITATE ENMOD CONVENTION
NEGOTIATIONS. WORKING GROUP'S DELIBERATIONS ARE BASED
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ON IDENTICAL DRAFT TEXTS TABLED IN THE CCD AUGUST 21, 1975

BY THE US AND THE USSR. BESIDES INFORMAL, OFF-THE-RECORD DISCUSSION IN WORKING GROUP, DURING SUMMER SESSION TWO DELEGATIONS HAVE COMMENTED ON THE DRAFT IN PLENARY (INDIA JULY 8 AND MONGOLIA JULY 27). CONTACT GROUP OF INTERESTED DELEGATIONS WORKED OUT ARTICLE V FORMULATION ON INTERMEDIARY FACT-FINDING CONSULTATIVE COMMITTEE, AND TWO OTHER SUCH GROUPS ARE CONSIDERING ARTICLE III (EFFECT OF TREATY ON PEACEFUL USES), AND NEW ARTICLE VII BIS (DEALING WITH REVIEW CONFERENCES), AND OTHER BILATERAL AND MULTI-LATERAL CONTACTS CONTINUE. US AND SOVIET DELEGATIONS HAVE KEPT IN CLOSE TOUCH THROUGHOUT SUMMER SESSION, WITH VIEW, INTER ALIA, TO ENSURING THAT NEITHER ADOPTS POSITION WITH RESPECT TO A PROPOSED CHANGE THAT THE OTHER CANNOT ACCEPT.

3. WORKING GROUP HAS OPERATED THROUGH SUCCESSIVE READINGS OF THE DRAFT TEXT, AND HAS APPARENTLY COMPLETED THE SECOND READING, EXCEPT FOR ARTICLE V (CONSULTATION/ COMPLAINTS) AND NEW ARTICLE VII BIS. THIS PROCESS HAS REACHED A POINT, HOWEVER, WHERE IT APPEARS THAT FOR MUCH OF WHAT REMAINS UNAGREED, DISCUSSION WOULD BE MORE USEFUL IN SMALLER GROUPS RATHER THAN TAKING WORKING GROUP THROUGH DRAFT AGAIN FROM BEGINNING TO END. IN PARTICULAR, A THIRD READING OF ARTICLE I IS NOT YET WARRANTED, AND OUTSTANDING ITEMS IN TITLE AND PREAMBLE DEPEND LARGELY ON RESOLUTION OF QUESTIONS OF FORMULATING TREATY SCOPE IN THAT ARTICLE. MOREOVER, TWO DELEGATIONS (CANADA AND ITALY) HAVE RECENTLY INTRODUCED NEW MATERIAL DEALING WITH ARTICLE III ON PEACEFUL USES WHICH, IF NOT DISPOSED OF VERY EXPEDITIOUSLY, COULD FURTHER COMPLICATE FINAL RESOLUTION OF OUTSTANDING ISSUES THAT WOULD ENABLE ANOTHER READING IN WORKING GROUP TO PRODUCE AN AGREED TEXT TO BE REPORTED TO CCD PLENARY.

4. WORKING GROUP HAS TWO MORE SESSIONS SCHEDULED INCLUDING THAT ON AUGUST 6, THE TARGET DATE FOR WINDING UP ITS WORK. ON ASSUMPTION THAT FINAL AGREEMENT IS UNLIKELY BY THEN, UNSYG'S SPECIAL REPRESENTATIVE (HYVARINEN INFORMALLY APPROACHED ACTING UP REP (BLACK) CONFIDENTIAL

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JULY 30 TO SOUND OUT US VIEWS ON HOW TO PROCEED. HYVARINEN THOUGHT THAT PLENARY CONSIDERATION OF OUTSTANDING PROPOSALS FOR MODIFICATION IN DRAFT WOULD NOT BE PRODUCTIVE. BLACK AGREED. SPEAKING ON PERSONAL BASIS, HE THOUGHT IT WOULD BE POSSIBLE TO SCHEDULE ONE OR MORE ADDITIONAL MEETINGS OF WORKING GROUP BEGINNING LATE IN WEEK OF AUGUST 9, IN WAY THAT WOULD NOT INTERFERE WITH INFORMAL MEETINGS WITH EXPERTS ON NEW WEAPONS

OF MASS DESTRUCTION WHICH ALSO TAKE PLACE THAT WEEK. (IT WOULD, OF COURSE, BE ANTICIPATED THAT DURING THE SIX-DAY INTERVAL BETWEEN WORKING GROUP MEETINGS DELEGATIONS WOULD CARRY ON INTENSIVE CONTACTS ON ISSUES THAT REMAINED OUTSTANDING ON AUGUST 6.) HYVARINEN THOUGHT THIS WOULD BE FEASIBLE. SOV DEL SUBSEQUENTLY AGREED IN PRINCIPLE WITH THIS APPROACH.

5. FOLLOWING PARAGRAPHS CONTAIN ANALYSIS OF CURRENT STATUS OF DRAFT TEXT OF ENMOD CONVENTION.

6. TITLE: SUGGESTIONS FOR CHANGES IN TITLE DEPEND ON OUTCOME OF QUESTION OF SCOPE FORMULATION IN ARTICLE I. YUGOSLAVIA, WHICH WANTS COMPREHENSIVE TREATY, HAS PRIVATELY SUGGESTED THAT IF LIMITED SCOPE IS RETAINED, TITLE SHOULD READ: "CONVENTION ON THE LIMITATION OF (HOSTILE ENMOD)". DELEGATION WILL ARGUE AGAINST THIS OR SIMILAR SUGGESTIONS ON GROUNDS THAT WORDS "CONVENTION ON" ADEQUATELY COVERS SCOPE OF TREATY, AND THAT TITLE WOULD BE INACCURATE ONLY IF IT READ "CONVENTION PROHIBITING MILITARY, ETC".

7. PREAMBLE. OUTSTANDING ISSUES INCLUDE A ROMANINA PROPOSAL TO ADD SPECIFIC REFERENCE TO NEED FOR NEGOTIATIONS ON NUCLEAR DISARMAMENT TO RESTATEMENT OF GENERAL AND COMPLETE DISARMAMENT OBJECTIVE, AND VARIOUS PROPOSALS REFLECTING ON FORMULATION OF SCOPE IN ARTICLE I, PRIMARILY RELATING TO "WIDESPREAD, LONG-LASTING OR SEVERE" (ARGENTINA, NETHERLANDS, ROMANIA, YUGOSLAVIA) AND "MILITARY OR ANY OTHER" (FRG). COMMENT: QUESTIONS RESPECTING PREAMBLE, EXCEPT THAT ON NUCLEAR DISARMAMENT, WILL PRESUMABLY RESOLVE THEMSELVES ON BASIS OF AGREEMENT ON TEXT OF ARTICLE I. WE WILL HAVE TO PERSUADE ROMANIANS THAT REFERENCE TO NUCLEAR

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DISARMAMENT WOULD BE OUT OF PLACE.

8. ARTICLE I. OUTSTANDING ISSUES REMAIN PROPOSALS BY ARGENTINA, NETHERLANDS, ROMANIA AND YUGOSLAVIA TO DELETE "SIDESPREAD, LONG-LASTING OR SEVERE" WITH THRESHOLD ON HOSTILE ENMOD USE, AND ASSUMING THRESHOLD REMAINS, TO INCLUDE PROHIBITION OF THREAT OF HOSTILE USE EXCEEDING THRESHOLD, AND TO ADD PROHIBITION OF USE OF TECHNIQUES THAT CAN REASONABLY BE EXPECTED TO PRODUCE EFFECTS ABOVE THRESHOLD (SWEDEN AND OTHERS). FRG CONTINUES TO ADVOCATE REPLACING WORD "MILITARY" WITH REFERENCE TO "IN ARMED CONFLICT"; ROMANIA HAS PROPOSED INCLUDING A COMMITMENT TO FURTHER NEGOTIATIONS TOWARD COMPREHENSIVE BAN. THE US, WITH SOVIET SUPPORT, HAS PROPOSED PRIVATELY THAT INTERPRETATION OF TERMS "SIDESPREAD", "LONG-LASTING", AND "SEVERE" BE INCLUDED IN AN ANNEX IN

ORDER TO GIVE A CLEARER MEANING TO THE THRESHOLD OF PROHIBITED USE.

9. TO DATE, RESPONSES TO THIS PROPOSAL AMONG KEY NON-ALIGNED HAVE BEEN LIMITED AND MIXED. MEXICO IS AWAITING HIGH LEVEL REACTION AND INSTRUCTIONS FROM CAPITAL. IN PRIVATE CONVERSATIONS INDIA SAID US INTERPRETATIONS ARE ACCEPTABLE AS LONG AS "SEVERE" INCLUDES ELEMENT OF PROPORTIONALITY TAKING ACCOUNT OF DIFFERING EFFECTS OF SAME PHENOMENON ON LARGE AND SMALL HEAVILY AND SPARSELY POPULATED STATES. SWEDEN THOUGHT US INTERPRETATIONS WOULD BE ACCEPTABLE BUT WANTED TO IMPROVE THAT OF "SEVERE." SWEDEN ALSO REPEATED DESIRE TO INCORPORATE BAN ON THREAT OF USE IN ARTICLE I PROHIBITION.

10. IN JULY 29 CONVERSATION WITH US AND SOVIET DELOFFS, ARGENTINE REP (BERASATEGUI) INDICATED POSSIBILITY HE COULD PERSUADE BUENOS AIRES TO ACCEPT THRESHOLD IF WORDS "WIDESPREAD, ETC." WERE CHANGED OR DROPPED. BERASATEGUI REPEATED HIS EARLIER POINT ABOUT INADVISABILITY OF USING VIRTUALLY IDENTICAL WORDS IN TWO INTERNATIONAL INSTRUMENTS (ENMOD TREATY AND LAWS OF WAR PROTOCOL) WITH DIFFERENT INTERPRETATIONS. THUS, ALTHOUGH HE THOUGHT THAT INTERPRETATIONS CIRCULATED BY US (PARTICULARLY THAT OF "SEVERE") SHOULD BE IMPROVED IN ANY CASE, HE DID NOT BELIEVE HE COULD ACCEPT TREATY WITH "WIDESPREAD, ETC." FORMULATION

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IN ARTICLE I TEXT. (BERASATEGUI ARGUED THAT US INTERPRETATION OF "SEVERE" IS CIRCULAR AND CONFUSING BECAUSE IT REFERS TO DAMAGE OR INJURY, AND BASIC ARTICLE I

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TO SECSTATE WASHDC PRIORITY 1622
INFO AMEMBASSY BONN
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UNDERTAKING IS NOT TO CAUSE "DESTRUCTION, DAMAGE OR INJURY.") BERASATEGUI SUGGESTED POSSIBILITY THAT ARGENTINA MIGHT BE ABLE TO ACCEPT REPLACEMENT OF "WIDESPREAD, LONG-LASTING OR SEVERE" WITH NOUNS, SUCH AS "EXTENT", "DURATION", AND "SEVERITY" OR "INTENSITY", WITH PARAMETERS OF THESE TERMS SPECIFIED IN ANNEX.

11. COMMENT: DELEGATION IS, OF COURSE, AWARE THAT WORDS "WIDESPREAD, ETC." ARE REGARDED AS BASIC ELEMENT IN US POSITION IN THAT, WITH APPROPRIATE INTERPRETATION, THEY SET ACCEPTABLE LEVEL FOR THRESHOLD. WE CANNOT PREDICT AT THIS TIME WHETHER CONFIDENTIAL

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BERASATEGUI WILL PRESS POINT ABOUT CONFLICTING INTERPRETATIONS OF SAME WORDS OR, IF HE DOES, LIKELIHOOD THAT SIGNIFICANT NUMBER OF DELS WILL BE PERSUADED. HOWEVER, ON BASIS OF SEVERAL DELS' REACTIONS THUS FAR, WE THINK REVISISING INTERPRETATION OF "SEVERE", BEYOND ADDING PROPORTIONALITY ELEMENT, MAY PROVE NECESSARY TO SATISFY KEN NON-ALIGNED.

12. ARTICLE II. US AND USSR HAVE AGREED TO REMOVE ILLUSTRATIVE LIST OF PHENOMENA FROM ARTICLE AND PLACE IT IN AN ANNEX. THIS SHOULD SATISFY MOST OF THE CONCERNS THAT HAVE BEEN VOICED ABOUT THIS ARTICLE; IT MAY LEAD DUTCH, FRG AND JAPANESE TO DROP PROPOSALS THAT RIVER DIVERSION AND CHANGING ICE COVER BE ADDED TO LIST. APPARENTLY, BASIS OF AT LEAST DUTCH AND GERMAN CONCERN

WAS THAT ARTICLE II TEXT HAD NOT MADE IT SUFFICIENTLY CLEAR THAT LIST WAS ILLUSTRATIVE IN CHARACTER AND NOT INTENDED TO BE ALL-INCLUSIVE OF PHENOMENA WHICH COULD RESULT FROM PROHIBITED USE OF AN ENMOD TECHNIQUE. HOWEVER, ARGENTINA CONTINUES TO PRESS FOR SOME REFERENCE IN LIST TO CHANGES IN WATER COURSES, ALTHOUGH NOT INSISTENT ON "RIVER DIVERSION."

COMMENT: DELEGATION WILL CIRCULATE AS EARLY AS POSSIBLE REVISION OF ART II AND NEW ANNEX LANGUAGE UNDERLINING ILLUSTRATIVE CHARACTER OF LIST.

13. ARTICLE III. DESPITE EARLIER INDICATION THAT CHANGE OF WORDS "SHALL NOT HINDER" TO "DO NOT APPLY TO" (PEACEFUL ENMOD USES) WOULD BE SUFFICIENT, IN LAST TWO WORKING GROUP MEETINGS THIS ARTICLE THREATENED TO UNRAVEL. FIRST CANADA AND THEN ITALY PROPOSED AMENDMENTS THAT WOULD CARRY OBLIGATIONS OF CONVENTION FAR INTO AREA OF REGULATION OF PEACEFUL USES (SEE GENEVA 6119 AND 6164). INDIA STATED IT WANTS ORIGINAL WORDING AND WISHES THIS CONVENTION TO STAY OUT OF PEACEFUL USES FIELD. US AND USSR HAVE STATED WILLINGNESS TO INCLUDE UNDERTAKING TO FACILITATE INFORMATION EXCHANGE ON PEACEFUL ENMOD (A LIMITED FORM OF BWC ARTICLE X). WE HOPE THIS WILL PROVE SUFFICIENT, WHEN ACCOMPANIED BY STRONG STATEMENT REGARDING INAPPROPRIATENESS OF PURPORTING TO REGULATE PEACEFUL USES IN THIS TREATY. HOWEVER, NEGOTIATIONS ON ARTICLE MAY NOW CONSUME RELATIVELY MORE TIME THAN HAD BEEN ANTICIPATED.

14. ARTICLE IV. WORKING GROUP HAS "TENTATIVELY ACCEPTED" INDIAN PROPOSAL TO REWORD ARTICLE IV AS FOLLOWS: "EACH STATE CONFIDENTIAL

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PARTY TO THIS CONVENTION UNDERTAKES TO TAKE ANY MEASURES IT CONSIDERS NECESSARY IN ACCORDANCE WITH ITS CONSTITUTIONAL PROCESSES TO PROHIBIT AND PREVENT ANY ACTIVITY IN VIOLATION OF THE PROVISIONS OF THE CONVENTION ANYWHERE UNDER ITS JURISDICTION OR CONTROL."

15. ARTICLE V. IN LIEU OF COMPLETING SECOND READING OF ARTICLE V IN WORKING GROUP, INFORMAL CONTACT GROUP (NETHERLANDS, SWEDEN, JAPAN AND USSR, JOINED AT APPROPRIATE JUNCTURES BY UK, FRG, ARGENTINA AND US) HELD EXTENSIVE CONSULTATIONS JULY 26-AUGUST 2 WITH VIEW TO PRODUCING GENERALLY ACCEPTABLE COMPROMISE ON QUESTION OF CONSULTATIVE FACT-FINDING COMMITTEE. ON AUGUST 2 CONTACT GROUP AGREED ON PACKAGE CONTAINING DRAFT REVISION OF ARTICLE V, PARA 1 (USSR) AND NEW PARA (NETHERLANDS, UK, SWEDEN) RELATING TO CONSULTATIVE COMMITTEE OF EXPERTS, AND AN ANNEX (DITTO) ON COMMITTEE'S RESPONSIBILITIES AND PROCEDURES. PACKAGE REFLECTS FAIRLY SIGNIFICANT SOVIET CONCESSIONS, (E.G., ANNEX SETS OUT COMMITTEE FUNCTIONS (FACT-FINDING RELATED TO ANY PROBLEM RAISED PURSUANT TO ARTICLE V(1) AND CONTAINS SOME SPECIFICS ON

COMMITTEE PROCEDURES). IT WAS CIRCULATED TO WORKING GROUP AUGUST 2 WITH DISCUSSION PLANNED FOR AUGUST 4 AFTER CONSIDERATION AS NECESSARY BY THE THREE CCD CAUCUSES. SOVIETS CLEARLY EXPECT PROMPT WORKING GROUP APPROVAL, THUS SOLVING THEIR BIGGEST PROBLEM IN DRAFT CONVENTION. NETHERLANDS AND SWEDEN SEEM ENTIRELY SATISFIED THAT THEY HAVE ACHIEVED THEIR OBJECTIVE OF INTERMEDIARY BODY IN COMPLAINTS PROCEDURE INDEPENDENT OF SECURITY COUNCIL. (TEXT TRANSMITTED AND DISCUSSED SEPTTEL).

16. ARTICLE VI. NEGOTIATIONS ARE COMPLETED EXCEPT FOR SPECIFICATION OF HOW MANY STATES ARE NECESSARY FOR ENTRY OF AMENDMENT INTO FORCE. DELEGATION HAS EXPRESSED ACCEPTABILITY OF EITHER ONE-HALF OR TWO-THIRDS. QUESTION SHOULD BE RELATIVELY MINOR ONE TO RESOLVE WHEN IT ARISES (PRESUMABLY WHEN ALL OTHER ARTICLES ARE SETTLED, AS US HAS SUGGESTED).

17. ARTICLE VII. THIS ARTICLE HAS BEEN ACCEPTED UNCHANGED.

18. ARTICLE VII BIS. THIS ARTICLE WOULD PROVIDE FOR REVIEW
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CONFERENCES. OF FOUR DRAFTS THAT HAVE BEEN CIRCULATED THREE ARE NOW IN PLAY (YUGOSLAV, MONGOLIAN AND NEW PAKISTANI ATTEMPT AT COMPROMISE BETWEEN THEM. CONTACT GROUP IS PLANNED ON THIS ARTICLE. DELEGATION WILL INSIST IN GROUP ON FIVE-YEAR INTERVAL BETWEEN ENTRY INTO FORCE AND FIRST REVIEW CONFERENCE (WE CAN ASSUME IT WILL BE MANDATORY) AND PRESS FOR MINIMUM FIVE YEAR INTERVAL AND REQUEST BY MAJORITY OF PARTIES FOR SUBSEQUENT REVCONS. SOVIETS ARE IN ACCORD. WE MAY HAVE TO FALL BACK TO MINIMUM THREE-YEAR INTERVAL BETWEEN SUBSEQUENT REVCONS TO FEND OFF PRESSURES FOR MANDATORY CONVENING OF SUCH CONFERENCES AFTER 8 OR 10 YEARS IF NO REQUEST HAS BEEN MADE.

19. ARTICLE VIII. FINISHED EXCEPT FOR NUMBER OF STATES REQUIRED FOR ENTRY INTO FORCE OF CONVENTION. DELEGATION HAS ASKED FOR VIEWS OF OTHER STATES, AND NUMBERS ARE FOCUSED ON RANGE BETWEEN 22 (REQUIRED FOR BIOLOGICAL WEAPONS CONVENTION) AND 40 (REQUIRED FOR NPT). COMMENT: BOTH BWC AND NPT ALSO REQUIRE, AMONG THE RATIFICATIONS, THOSE OF DEPOSITARY STATES, A FEATURE THAT WILL BE LACKING HERE. ON THIS BASIS, PERHAPS A NUMBER TOWARD UPPER END OF ABOVE SPECTRUM WOULD BE PREFERABLE. ON OTHER HAND, LARGE NUMBER OF EARLY RATIFICATIONS MAY BE QUESTIONABLE; THIS CIRCUMSTANCE COULD ARGUE FOR LOW QUOTA.

20. ARTICLE IX. ONLY OUTSTANDING ISSUE IS QUESTION OF

ARABIC AS OFFICIALS LANGUAGE. COMMENT: EARLY INSTRUCTIONS REGARDING ACCEPTABILITY OF ARABIC WOULD BE APPRECIATED.

21. PENDING GUIDANCE. AS FAR AS DELEGATION IS AWARE, WASHINGTON GUIDANCE REMAINS PENDING ON (A) QUESTION OF THREAT OF USE (GENEVA 5719 PARA 8(A)); (B) ADDITION OF ARABIC AS AUTHENTIC LANGUAGE OF TREATY (GENEVA 6045 PARA); AND (C) LEGAL ISSUE RAISED BY DUTCH WITH RESPECT TO ILLUSTRATIVE LIST OF EXAMPLES (GENEVA 5965 AND 5978 PARA 6). IT MAY ALSO PROVE USEFUL TO HAVE FURTHER VIEWS ON NUMBER OF ACCEPTANCES REQUIRED FOR ENTRY INTO FORCE OF AN AMENDMENT, AS BETWEEN TWO-THIRDS AND SIMPLE MAJORITY. CATTO

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